

REMARKS

This amendment responds to the non-final Office Action mailed July 30, 2007. Previously, Claims 1-4, 6, 7, 18 and 19 were pending. In the instant amendment, Claims 5-17 and 20-21 have been canceled without prejudice. Claims 1, 3 and 19 have been amended. After entry of the instant amendment, Claims 1-4 and 18-19 will be pending and under consideration in the instant application.

I. AMENDMENTS TO THE CLAIMS

In the instant amendment, Claims 5-17 and 20-21 have been canceled without prejudice to Applicants' right to pursue the canceled subject matter in one or more related divisional, continuation and continuation-in-part patent applications.

Claims 1, 3 and 19 have been amended. Support for the amendments to Claims 1, 3 and 19 can be found, for example, in the specification, at page 4, lines 6-21, at page 39, lines 15-18, Table 1 and Figure 4.

Applicants submit that these amendments do not introduce any new matter and are fully supported by the specification as filed. Therefore, entry and consideration thereof is respectfully requested.

II. THE REJECTION OF CLAIMS 1-4, 6, 7, 18 AND 19 UNDER 35 U.S.C. §112, SECOND PARAGRAPH

Claims 1-4, 6, 7, 18 and 19 stand rejected for alleged indefiniteness under 35 U.S.C. § 112, second paragraph. In particular, the Patent Office alleges that the claims are indefinite because the claims fail to set forth which mutations at recited amino acid positions of HIV protease are associated with the desired phenotype. *See* the Office Action, pages 1-2. Further, the Patent Office contends that the claims are indefinite because the claims fail to provide a reference isolate when referring to particular amino acid positions of HIV protease. *See* the Office Action, page 2.

Claims 1 and 3 have been amended by specifying the mutations at recited amino acid positions of HIV protease and by specifying the reference sequence of HIV protease. Applicants submit that this rejection is obviated in view of the amendments to Claims 1 and 3. Therefore, Applicants respectfully request that the rejection of Claims 1-4, 6, 7, 18 and 19 under 35 U.S.C. § 112, first paragraph be withdrawn.

III. THE REJECTION OF CLAIMS 1-4, 6, 7, 18 AND 19 UNDER 35 U.S.C. §102(b)

Claims 1-4, 6, 7, 18 and 19 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Ziermann *et al.*, 2000, *JOURNAL OF VIROLOGY* 74(9):4414-4419 (“Ziermann *et al.*”). Specifically, the Patent Office alleges that Ziermann *et al.* teaches that K20T/R, L33I, M36I/V and 77I mutations of HIV-1 protease are associated with hypersusceptibility to treatment with amprenavir. *See* the Office Action, pages 203.

Although Applicants do not agree with this rejection, to expedite the prosecution of the instant application, Applicants have amended Claims 1 and 3 by deleting the detection of a mutation at amino acid position 20, 33, 36 and 77. Applicants respectfully submit that the rejection of Claims 1-4, 6, 7, 18 and 19 is obviated in view of the amendments to Claims 1 and 3 as Ziermann *et al.* does not teach each and every element of the invention as presently claimed. Therefore, Ziermann *et al.* cannot anticipate Claims 1-4, 6, 7, 18 and 19 as presently pending. *See In re Bond*, 15 U.S.P.Q.2d 1566 (Fed. Cir., 1990). Accordingly, Applicants respectfully request that the rejection of Claims 1-4, 6, 7, 18 and 19 as being anticipated by Ziermann *et al.* under 35 U.S.C. § 102(b) be withdrawn.

IV. THE REJECTION OF CLAIMS 1-4, 6, 7, 18 AND 19 UNDER 35 U.S.C. § 112, SECOND PARAGRAPH

Claims 1-4, 6, 7, 18 and 19 stand rejected for alleged lack of enablement under 35 U.S.C. § 112, first paragraph. The Patent Office alleges that the specification does not enable one skill in the art to make and/or use the invention commensurate in scope with the claims because the broadest claims fail to specify the protease inhibitor of interest or to specify which mutations at recited amino acid positions are associated with desired phenotype.

Although Applicants do not agree with this rejection, to expedite the prosecution of the instant application, Applicants have amended Claims 1 and 3 by specifying that the protease inhibitor is amprenavir and specifying the particular mutations at recited amino acid positions. Applicants respectfully submit that the rejection is obviated in view of the amendments to Claims 1 and 3. Accordingly, Applicants respectfully request that the rejection of Claims 1-4, 6, 7, 18 and 19 under 35 U.S.C. § 112, first paragraph be withdrawn.

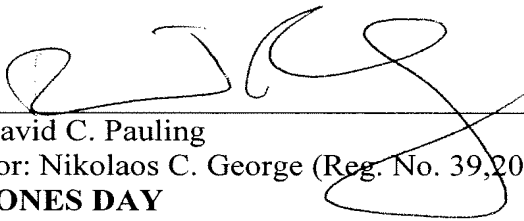
CONCLUSION

Applicants believe that the claims of the instant application meet all of the conditions for patentability and are in condition for allowance. Accordingly, an early indication of the same is respectfully requested.

No fees, other than that for the Petition for Extension of Time, are believed to be due with this response. However, pursuant to 37 C.F.R. §1.136 (a)(3), the Commissioner is authorized to charge all required fees, or credit any overpayment, to Jones Day Deposit Account No. 50-3013 (949677-999014).

Respectfully submitted,

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